

**REMARKS**

Claims 1-3 stand rejected under 35 USC §101. Applicant has amended claims 1-3 to clarify that the claimed steps are being performed by a computer.

Claims 2 and 5 stand rejected under 35 USC §112, second paragraph. Applicant has amended claims 2 and 5 to recite "only if the product was sold by the store, ...".

Claims 1, 3, and 4 stand rejected under 35 USC §102(b) as anticipated by Beller. Applicant has amended claims 1 and 3, but otherwise respectfully traverses the rejection. Beller fails to disclose a radio frequency product label. Beller discloses a bar code label, specifically, a two-dimensional bar code label.

Claims 2 and 5 stand rejected under 35 USC §103(a) as being unpatentable over Beller in view of Otto.

It is respectfully noted that, although not explicitly set forth in the Office Action of March 15, 2004, the present rejections of claims 2 and 5 are statutorily based upon 35 USC §102(e), because Otto issued after March 30, 2001, the filing date of the parent application.

35 USC §103(c), as recently amended to apply to all applications filed on or after November 29, 1999, states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

At the time the present invention was made, the present invention, and the Otto prior art were owned by, or subject to an obligation of assignment to, the same person, NCR Corporation. Pursuant to 37 C.F.R. § 1.104(a)(5)(i):

Copending applications will be considered by the examiner to be owned by, or subject to an obligation of assignment to, the same person if... [t]he application files refer to assignments recorded in the Patent and Trademark Office... which convey the entire rights in the application to the same person or organization.

The assignment information for the present invention, and the Otto prior art is as follows:

Present invention: Reel 012023, Frames 648-49, recorded July 13, 2001; and

Otto: Reel 011695, Frames 343-44, recorded March 23, 2001.


Each of these two assignments conveys the entire rights in the respective inventions to NCR Corporation, a corporation of the State of Maryland, having its principal place of business in Dayton, Ohio. Thus, pursuant to 37 C.F.R. § 1.104(a)(5)(i), it is respectfully submitted that a necessary showing of common ownership has been made.

Thus, 35 U.S.C. § 103(c), as amended, serves to exclude Otto as prior art for the present application, because the present application has been filed after November 29, 1999.

Applicant has noted the prior art made of record but not relied upon.

Applicant now respectfully requests that the pending claims be allowed.

Respectfully submitted,

  
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JUN 15 2004